

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30421

This is a summary of a decision issued following the June 2018 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he maintained blank documents that were pre-signed by his clients in order to facilitate transactions for clients.

II. Findings of Fact

In May 2016, Respondent was terminated from Firm ABC (“ABC”), following the firm's investigation. ABC reported his discharge on Form U5 as follows:

Firm investigation determined that from approximately late 2012 through April 2016, representative was responsible for having clients sign blank or undated forms and was also responsible (by either engaging in the practice or overseeing office employees who engaged in the practice) for the "whiting out" of dates on forms requiring client signatures in order to reuse the forms. The above practices occurred in more than 100 customer accounts. Representative initially denied knowledge and existence of the practices but later that day admitted to knowing about them.

Respondent disclosed the termination to CFP Board in June 2016, stating that he was terminated due to a violation of "internal paperwork policy" because he "re-used previously signed Universal Switch Letters." In his disclosure to CFP Board, Respondent described that he re-used previously signed documents because he had fallen behind in submitting client-signed switch forms detailing mutual fund transactions after the transactions were executed. He further stated that he admitted the practice to ABC, which decided to terminate his contract. Respondent disclosed to CFP Board that, as of May 2016, he was associating with DEF, but that he was subject to a heightened supervision plan and increased continuing education requirements. DEF (1) required Respondent to be subject to four in-person branch office inspections during the first two years of his affiliation; (2) forbid him from holding a compliance position for two years; and (3) required him to complete the following continuing education: (a) two hours of ethics continuing education within six months, (b) four hours of ethics continuing education in the second year of association, and (c) four training opportunities per year.

In his correspondence with CFP Board, Respondent described further his practice of using "pre- signed" switch forms. Specifically, Respondent described that the switch form contained two pages, the first of which contained a description and explanation for the transaction, and the second of which required the client's signature. He and his staff would ask clients to sign, but not date, the forms so that they could reuse the signature page for subsequent transactions. Respondent admitted that he and his staff engaged in this practice with respect to switch forms for approximately 100 clients, but stated that his clients "were generally aware and informed of this process" and saw a completed first and second page of the switch form for each transaction. Respondent denied ever using this practice with respect to any

other type of document. Respondent also denied that he personally used "white out" on any form, but acknowledged that he later learned that a staff member used "white out" on the date of several switch forms.

On February 22, 2018, the Financial Industry Regulatory Authority ("FINRA") accepted Respondent's Letter of Acceptance, Waiver and Consent ("AWC") in which Respondent accepted and consented to, without admitting or denying, the following findings:

From January 2013 through May 2016, Respondent maintained customer-signed, but otherwise blank forms for approximately 130 clients to submit to ABC in connection with mutual fund exchanges. The pre-signed forms, which were Mutual Fund Investor Acknowledgements and Universal Switch Letters, were completed and submitted to the Firm following execution of the transactions. The Firm did not require these forms be signed prior to the transactions. Respondent's actions were in violation of ABC's written supervisory procedures.

By virtue of the foregoing, Respondent violated FINRA Rule 2010.

In the AWC, Respondent consented to the imposition of the following sanctions: (1) a suspension from association with any FINRA member in any capacity for a period of three months; and (2) a \$5,000 fine. Respondent's suspension was effective from March 2018 through June 2018.

III. Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(A) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.3 of the *Rules of Conduct*, which provides that a certificiant shall comply with applicable regulatory requirements governing professional services provided to the client.

Article 13.1 of the *Disciplinary Rules* provides that a letter or other writing from a governmental or industry self-regulatory authority to the effect that a Respondent has been the subject of an order of professional discipline by such authority shall conclusively establish the existence of such professional discipline for purposes of disciplinary proceedings and shall be conclusive proof of the basis for such discipline by the Respondent. As defined in Article 13.4 of the *Disciplinary Rules*, professional discipline "shall include the suspension, bar or revocation as disciplinary measure by . . . [an] industry self-regulatory organization or professional association."

FINRA is an industry self-regulatory authority. The AWC in which Respondent consented to a suspension is an order of professional discipline by FINRA, and Respondent is the subject of that order. Therefore, the AWC conclusively establishes the existence of such discipline for purposes of this disciplinary proceeding and is conclusive proof of the basis for such discipline by the Respondent.

Based on the FINRA AWC, Respondent, a certificiant, failed to comply with applicable regulatory requirements governing professional services provided to the client when he maintained forms previously signed by customers to submit to his firm in connection with mutual fund exchanges in violation of FINRA Rule 2010. Thus, Respondent violated *Rules of Conduct* Rule 4.3.

Second Ground for Discipline

Pursuant to Article 3(A) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 5.1 of the *Rules of Conduct*, which provides that a certificant who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board *Code of Ethics*.

Although the Commission found that there was insufficient evidence to prove that Respondent allowed his staff to "white out" dates on forms, as stated in Respondent's Form U5, Respondent, a certificant, failed to perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics* when he had clients sign blank or undated forms and his firm terminated him for this conduct. Thus, Respondent violated *Rules of Conduct* Rule 5.1.

Third Ground for Discipline

Pursuant to Article 3(D) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts that are the proper basis for professional discipline. The acts set forth in the AWC are the proper basis for professional discipline, and the FINRA suspension constitute professional discipline. Therefore, the AWC is conclusive proof of those acts that there are grounds to discipline Respondent for acts that are a proper basis for professional discipline.

IV. Discipline Imposed

The Commission found that Respondent's conduct violated Rules 4.3 and 5.1 of the *Rules of Conduct*, providing grounds for discipline under Articles 3(a) and 3(d) of the *Disciplinary Rules*.

CFP Board has issued non-binding *Sanction Guidelines* that are intended to serve as guidance for determining the appropriate sanction. In arriving at its decision, the Commission determined that the applicable *Sanction Guidelines* recommended:

1. Conduct 2: Books and Records Violation (Private Censure);
2. Conduct 12: Employer Policies Violation (Private Censure);
3. Conduct 30: Securities Law Violation (Public Letter of Admonition.); and
4. Conduct 33: Professional Discipline as defined in Article 13.6 involving a suspension for more than one calendar month (30 days) and less than three calendar months (90 days) (Suspension for at least an equal length, up to one year).

In reaching its decision, the Commission considered *Anonymous Case Histories ("ACHs")* 27686 and 28675, both of which resulted in a Public Letter of Admonition. In *ACH* 27686, a CFP® professional signed incomplete documents in 34 client files, including prospectus receipts, journal requests, investment switch/exchange disclosures, distribution requests, and withdrawal requests, violating his broker-dealer's documents signature policy. The CFP® professional was terminated by his firm for this conduct and also entered into an AWC with FINRA with respect to his actions, wherein he consented to the entry of findings that he violated NASD Rule 2110 and FINRA Rule 2010. FINRA suspended the CFP® professional for 30 days and fined him \$5,000. Pursuant to a settlement agreement, the Commission issued the CFP® professional a Public Letter of Admonition. In *ACH* 28675, a CFP® professional, who was facing pressure to complete a large number of Automated Customer Account Transfer forms in a short period of time was terminated by his firm after directing his clients to sign the forms in blank. Pursuant to a settlement agreement, the Commission issued the CFP® professional a Public Letter of Admonition.

ACH 30421

- 3 -

The Commission also reviewed aggravating and mitigating factors to determine whether there were any material factors, and, if so, what weight those factors may have in its decision. As an aggravating factor, the Commission considered that Respondent's misconduct involved more than 100 clients over many years. In mitigation, the Commission considered that there was no evidence of client harm and that Respondent had no client complaints or arbitrations as a result of his actions or any other conduct. The Commission also noted that Respondent had already administratively relinquished his CFP mark. Based on these circumstances, the Commission determined that a Public Letter of Admonition was appropriate.